

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 157 of 2024

with

CAN 1 of 2025

Bhola Yadav

V.

Union of India & Ors.

For the Petitioner	:Mr. Anshunath Chakraborty. Mr. Gourab Mukhopadhyay
For the Respondents	: Mr. Rajendra Banerjee Mr. Amal Kumar Datta.
Judgment on	: September 25 , 2025

Madhuresh Prasad, J.:

1. The writ petitioner was the applicant before the Central Administrative Tribunal, Kolkata Bench (hereinafter referred as the Tribunal). He has put to challenge a judgment dated 15/03/2024 passed by the Tribunal in OA No. 00634 of 2014.
2. The present writ petitioner was appointed as a Gatekeeper on 21/07/2004. He claims that he was promoted as Shuntman "B" on 21/03/2007. The Divisional Personnel Officer, Howrah issued an office

memo on 15/09/2008 advising the Shuntman “B” to keep themselves ready for a suitability test which was to be held shortly. The authorities were also directed to give brief promotional training for all the candidates. The office memo contained a stipulation that if anybody failed to attend the training they will not be eligible for appearing in the suitability test. The office memo further directed that the competency certificate will be sent to the office of the undersigned upon successful completion of training. The petitioner’s name did not figure in this office memo.

3. The authority thereafter issued another office memo dated 29/09/2008 notifying the date fixed for suitability test for the post of shuntman “A”, which was to be held on 15/10/2008. The petitioner’s name was not appearing in this list also. Thereafter, suitability test was conducted. As a result of the suitability test, the panel was published by a memo dated 24/12/2008, provisionally notifying names for promotion from Shuntman “B” to “A”.
4. The petitioner being aggrieved by his exclusion in the promotion process approached the Tribunal by filing OA No. 1106 of 2011. It was contended by the petitioner before the Tribunal that he was not considered for the promotion process because he had not completed the two (2) year experience in the “Operating Department”. Some other persons who had been allowed to appear in the suitability tests had also not completed 2 years as Shuntman “B”. The petitioner was thus discriminated against.

The requirement of 2 years experience was relaxed by a communication dated 11/07/2006 from the Senior Personnel Officer (T) to one year. The petitioner however was deprived of the benefit of relaxation.

5. The Tribunal vide order dated 13.05.2013 passed in OA No. 1106 of 2011 directed the respondents to consider the petitioner's claim by reasoned and speaking order. The reasoned and speaking order was passed on 30.07.2013, in compliance of the Tribunal's order.
6. The speaking order dated 30/07/2013 was assailed by the petitioner by filing an Original Application, bearing No. O.A. 00634 of 2014 before the Tribunal. The writ petitioner impleaded four persons as party-respondents in the OA. He alleged that those 4 persons namely Baidyanath Khan, Ganesh Rajawar, Kartik Chandra Mondal and Dipak Kumar Prasad were juniors to him, but were included in the list. The petitioner thus alleged discrimination. Those respondents who were juniors to him, were granted the relaxation. However, the benefit of relaxation was not extended to the writ petitioner. He submitted before the Tribunal that 5 vacancies were still existing in the unreserved category. The authorities wrongly considered the petitioner as having joined as Shuntman "B" on 01/05/2007. According to him his date of joining as Shuntman "B" was 24/04/2007. He therefore submitted that the 4 persons impleaded in the OA were wrongly considered as the petitioner's seniors.
7. The Learned Advocate representing the respondents, on the other hand submitted that the process was undertaken for filling up 72 vacancies of

Shuntman "A" by way of promotion from Shuntman "B". 36 of these vacancies were for Unreserved (UR), 16 for Scheduled Castes (SC), and 20 vacancies were under the Scheduled Tribes (ST) category. 36 candidates were called for from the UR category. There were only 7 SC candidates available, and they were called for suitability test. Since there were no ST candidates available, the 20 vacancies under the ST category and the remaining 9 vacancies under the SC category remained unfilled. Thus a total of 29 vacancies remained unfilled but under the reserved category.

8. The petitioner a member of the UR category, therefore cannot be considered against these remaining 29 vacancies. The petitioner is junior to the 36 candidates who came within the zone of consideration. The petitioner therefore was not called for the suitability test.
9. Insofar as the allegation of discrimination with reference to the above named for persons, it is the specific stand of the respondents that these 4 persons belonged to SC category, and therefore the petitioner is not in a position to claim any parity with these 4 persons. There is a provision in the extant Rules that even a junior SC category candidate may be called for a suitability test against the vacancy reserved for the category.
10. The respondent have stated that the petitioner was considered for promotion to the post of Shuntman "A" in a subsequent suitability test, based on his seniority position. However, due to pendency of a

departmental proceeding against the writ petitioner, his promotion has been kept pending.

11. The respondents have clarified that the petitioner was posted as Shuntman "B" vide order dated 21/03/2007. He, however took charge as a Shuntman "B" on 01/05/2007.
12. It is submitted that the respondents have thus committed no illegality in calling candidates for participating in the suitability test for the promotion process.
13. Upon consideration of rival submissions, the Tribunal concluded that rejection of the petitioner's claim by the speaking order dated 30/07/2013 was unsustainable. The Tribunal arrived at such an opinion, since the speaking order did not reflect consideration of the petitioners allegation regarding discriminatory treatment. The rejection of petitioner's claim is founded on an assertion that the candidates who were considered, were seniors to the petitioner, but the seniority position with reference to any seniority list has not been placed on record. The Tribunal also found that respondent No. 4 and 5, namely Baidyanath Khan, and Ganesh Rajwar belonged to the UR category. Therefore the Tribunal did not accept the stand of the respondents.
14. The Tribunal thus proceeded to hold that the speaking order dated 13/05/2013 was legally not sustainable. By the impugned judgement dated 15/03/2024, the Tribunal directed the Principal Chief Personnel Officer to personally consider the case of the applicant/writ petitioner for

promotion to Shuntman “A” against the notice dated 15/09/2008 and 29/09/2008 giving due regard to the relative seniority of the applicant as it existed at the material time, and relaxation granted to the candidates in terms of the office memo dated 11/07/2006 (supra). Consequential relief has also been allowed notionally, subject to the petitioner being found eligible for promotion. The Tribunal however clarified that even if the petitioner is found eligible at the material time, financial benefits will be available from the date the applicant takes charge of the higher post, and that no back wages will be paid to the applicant/writ petitioner.

15. In view of the nature of the order passed by the Tribunal, we see no reason for the applicant/writ petitioner to assail the same by way of the present writ petition. The learned advocate for the writ petitioner however submitted that vacancies are still available and therefore the Tribunal should have directed the authorities to consider him for promotion to the post of Shuntman “A” treating him at par with the private respondents. The petitioner is also entitled to all consequential benefits. The petitioner has thus challenged the judgement of the Tribunal.

16. We find no force in such submissions. The Tribunal based on the reasons assigned by the respondent authorities that the private respondents belong to reserved category, and that no one junior to the petitioner in his own category (UR), was called for the suitability test, did not find any reason to pass any positive direction as prayed by the writ

petitioner. The Tribunal however directed the respondents to reconsider the issue with reference to relative seniority position of the applicant. Such a direction was passed since the seniority position or seniority list was not placed before the Tribunal.

17. In absence of the seniority position it is not possible to conclude that the petitioner was excluded from the suitability test because he was junior to others in his category. At the same time it is also not possible to conclude that he was senior to anyone from his category, who was called for suitability test. Therefore, we are not inclined to agree with the submission of the learned advocate for the applicant writ petitioner that the Tribunal ought to have given a positive direction to consider the petitioner for grant of promotional benefits, at par with anyone of the candidates. We, therefore, find no reason to interfere with the judgement dated 15/03/2024, passed by the Tribunal, directing consideration. We find no merit in the writ petition.

18. However, before parting with the judgement, taking note of pendency of the present writ petition after disposal of the OA by the Tribunal, we consider it in the interest of justice that the time stipulated in the impugned judgement for communicating a decision to the applicant within a period 120 days from the date of receipt of certified copy in the office of the respondents be extended/modified to a period of 120 days from the date of certified copy of the present order being passed by us. With this limited modification in the impugned judgement dated

15/03/2024 passed in OA No. 00634/2014, for compliance of the Tribunal's order, we dismiss the present writ petition. The connected application being CAN 1 of 2025 is also dismissed.

19. There will be no order as to costs.

20. Parties are at liberty to get Xerox certified copy of this order upon fulfilling all necessary formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)